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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,728

01/23/2004

Thomas J. Berwald

0092-18 CIP

7328

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EXAMINER

TUGBANG, ANTHONY D

ART UNIT

PAPER NUMBER

3729

MAIL DATE

DELIVERY MODE

08/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/763,728	Applicant(s) BERWALD ET AL.	
	Examiner A. Dexter Tugbang	Art Unit 3729	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment, Paragraph 2. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Attachment, Paragraph 1.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: 35, 36, 38-47 and 50-53.
Claim(s) rejected: 32, 34 and 37.
Claim(s) withdrawn from consideration: 1-19, 33, 48, 49 and 54-65.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/A. Dexter Tugbang/
Primary Examiner
Art Unit: 3729

Art Unit: 3729

Attachment to Advisory Action

1. In the applicant(s) After Final Response (filed on July 30, 2007), the Terminal Disclaimer has been approved and entered. Accordingly, the Double Patent rejection (see paragraphs 5 and 6 of the Final Rejection, mailed on May 31, 2007) has been withdrawn.

Thus, Claims 35, 36, 38 through 47 and 50 through 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

It is noted, however, that the prior art rejections (see paragraphs 7 and 8 of the Final Rejection, mailed on May 31, 2007) are still maintained.

2. Additionally, the proposed After Final amendment will not be entered for at least the following reasons.

a) Claim 32 was amended to include all of the limitations of Claim 34 and a *portion* of the limitations from Claim 38. Since Claim 32 does not include the limitations of Claim 38 in its entirety, this narrows the scope of the claims significantly enough such it would raise new issues requiring further consideration by the examiner.

b) Moreover, the alternative language “at least one of” (line 5 of Claim 32) now being proposed raises new issues at least under 112, 2nd paragraph with Claims 35, 36 or 39. For example, if the selection in Claim 32 would be “placing an inner ring circumferentially about at least a portion of the inner side surface”, then this would conflict with the exact same limitations being recited in each of dependent Claims 35 and 39. So Claims 35 and 39 would then be redundant. Claims 35 and 39 would then be misleading and confusing, rendering the claims as being indefinite.